Province of
British Columbia

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INQUIRY

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To: Lieutenant Governor in Council
Province of British Columbia

INTERIM REPORT OF COMMISSIONER

A. Terms of Reference

On April 18, 1990, Order in Council No. 621 established this Commission of Inquiry and set the Terms of Reference as follows:

> The matters to be inquired into and reported on are the process and procedure followed by the Ministry of Attorney General in deciding that William E. Reid would not be prosecuted with respect to the awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society and, in particular, to inquire and report on:
>
> (a) the correctness and adequacy of the process applied in making that decision;
>
> (b) the objectiveness and good faith with which this process was applied;
>
> (c) the presence, if any, of external influence affecting the outcome of the decision;
>
> (d) the correctness of the Attorney General not to be involved, directly or indirectly, in the decision;

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(e) the correctness of the general practice, followed in this case, of not publicly disclosing information and events that are considered in deciding not to prosecute a citizen;

(f) the integrity with which the decision was made.

On June 28, 1990, Order in Council No. 1015 amended the Terms of Reference by deleting the requirement that the Commissioner report "on or before June 30, 1990". This was necessary because of the unavoidable delay to the Inquiry caused by the intervening initiation of criminal proceedings against Mr. Reid by the Opposition Justice Critic, Moe Sihota.

On August 27, 1990, Order in Council No. 1276 further amended the Terms of Reference as follows:

Further matters to be inquired into and reported on are:

(a) the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute Stuart (Bud) Smith, Q.C. on allegations of attempting to obstruct justice as a result of intercepted and recorded telephone conversations between Mr. Smith and others;

(b) the appropriateness of the Deputy Attorney General of British Columbia referring to the Deputy Attorney General of Alberta the issue of whether or not to prosecute persons on allegations of criminal conduct arising from the interception, recording and disclosure of certain telephone conversations; and

(c) the appropriateness of the Deputy Attorney General of British Columbia applying the criterion of public interest in deciding not to prosecute persons on the recommendation of the Deputy Attorney General of Alberta in response to the referral described in paragraph (b)."

B. Precipitating Events

The administration of justice in British Columbia has been under considerable suspicion because of the unprecedented series of events during the past year involving, in turn:

- The resignation of William E. Reid as Provincial Secretary in the Provincial Cabinet on September 22, 1989 following concerns raised publicly with respect to his awarding of a grant under the Growth and Opportunities B.C. Grants Program to the Semiahmoo House Society.
- The special investigations by the Auditor General and the Comptroller General into the administration by Mr. Reid of the Growth and Opportunities B.C. Grants Program.
- The RCMP investigation of Mr. Reid and others, recommending that Mr. Reid be prosecuted under s.122 of the Criminal Code for breach of trust by a public officer.
- The decision of the Assistant Deputy Attorney General, Criminal Justice Branch, William F. Stewart, that Mr. Reid should not be prosecuted for breach of trust by a public officer or for any other criminal offence.
- The appeal of that decision by the RCMP to the Deputy Attorney General, E.N. (Ted) Hughes, Q.C., and his final decision not to prosecute Mr. Reid.
- The public challenge of this decision by the Leader of the Opposition, Michael Harcourt and the Opposition Justice Critic, Moe Sihota.
- The commissioning of this Inquiry into the process applied in deciding not to prosecute Mr. Reid.
- The initiation of a private prosecution against Mr. Reid by Mr. Sihota.
- The decision of the Attorney General, Stuart (Bud) Smith, Q.C. not to intervene in the private prosecution or to enter a stay of proceedings.

- The public statements by Mr. Smith and Mr. Sihota regarding disclosure of information and documents related to the prosecution of Mr. Reid.
- The withdrawal of the private prosecution by Mr. Sihota.
- The disclosure by Mr. Sihota to the Legislative Assembly and the news media of taped telephone conversations between Mr. Smith and others.
- The resignation of Mr. Smith as Attorney General.
- The referral by Mr. Hughes to Neil McCrank, Deputy Attorney General of Alberta, of the decision whether anyone should be prosecuted for attempting to obstruct justice or for intercepting, recording and disclosing telephone conversations contrary to the Criminal Code.
- The decision by Mr. Hughes that the prosecution of persons named by Mr. McCrank as facing a substantial likelihood of conviction for the unlawful disclosure of private communications, was not in the public interest.
- The broadening of the Terms of Reference of this Inquiry.

C. Preliminary Findings

During 6 days of public hearings over the past two weeks, this Inquiry has received detailed evidence on administrative, legal and political aspects covered by these events and the expanded Terms of Reference. Witnesses with direct knowledge of the facts involved have given sworn testimony under thorough direct and cross examination. Others, with expert and representative opinions on the issues being considered, have made written and oral presentations to the Inquiry.

All of the proceedings have been open to the public and have been given wide coverage by the news media. All of this reflects the importance of the issues being considered and the degree of concern about them in the general public and among the various groups directly involved in the administration of justice in B.C., including the police, the legal profession, politicians, civil libertarians, and senior justice administrators.

The complex facts and fundamentally important policy issues being addressed by this Inquiry demand careful attention. The final Inquiry Report will include detailed findings of fact, analysis of the issues, and observations on possible adjustments to the process for deciding criminal prosecution matters in British Columbia. This will take some time to complete.

However, there are some questions directly related to the facts of this case which can and should be answered immediately. These involve the independence, integrity and professionalism of the senior officials in the Attorney General's Ministry who took part in the initial decision not to prosecute Mr. Reid, and in the subsequent decisions related to the private prosecution initiated by Mr. Sihota and the referral of the taped telephone conversations issues to Mr. McCrank. Specifically, these officials include Mr. Hughes,

Mr. Stewart, Robert Wright, Q.C. (Vancouver Regional Crown Counsel) and Ernie Quantz (Director of Operations, Criminal Justice Branch).

1. The decision not to prosecute Mr. Reid

The evidence is clear, uncontradicted and acknowledged by all directly interested parties, including Mr. Sihota and the RCMP, that the final decision not to prosecute Mr. Reid was made by Mr. Hughes without any political or other improper influence or interference at any stage. His decision followed exhaustive research and review by experts in criminal law employed in senior positions within the Attorney General's Ministry or retained from private practice on this case. The final decision was made following the multi-stage appeal process between the RCMP and the Attorney General's Ministry, as set out generally in Access to Justice, the 1988 report of the Justice Reform Committee.

The decision was accepted by the Commanding Officer of the RCMP in British Columbia, Deputy Commissioner D.K. Wilson, although he did not agree with it. If he had believed that the decision was corrupt in any way, he testified that he would have initiated a prosecution of Mr. Reid in spite of the Deputy Attorney General's decision.

There is no evidence that any person, including RCMP officers, Attorney General's Ministry officials and private lawyers retained for this case acted with anything but integrity, independence and professionalism in performing their respective duties regarding the process leading to the final decision of Mr. Hughes not to prosecute Mr. Reid. In addition, all of the evidence supports the conclusion that former Attorney General Bud Smith played no part whatsoever in that decision-making process. In short, the system worked fairly, effectively and as intended. However, the widespread public suspicion that this was not so is a major concern that this Inquiry must address.

2. The private prosecution of Mr. Reid

Mr. Smith as Attorney General was involved in some aspects of his Ministry's response to the private prosecution of Mr. Reid which was initiated by Mr. Sihota. That will be commented on more fully in the final Inquiry Report. However, the evidence is clear and uncontradicted that the actions taken and recommendations made by Mr. Hughes, Mr. Stewart and Mr. Quantz

(a) leading to Mr. Smith's decision that the Ministry would not intervene or enter a stay of proceedings in the private prosecution of Mr. Reid, and

(b) leading to Mr. Smith's decision to require a subpoena for disclosure of the Crown's case to the private prosecutor,

were in good faith and were consistent with their administrative responsibilities.

3. Mr. Hughes' referral of the "tapes" issues to Mr. McCrank

The decision to refer the issues arising from the taped telephone conversations to Mr. McCrank in Alberta was made by Mr. Hughes, after consultation with senior Attorney General Ministry officials. The evidence is clear and uncontradicted that this decision was independent of any improper political influence or interference by Mr. Smith or anyone else. While this referral process, and the eventual decision not to prosecute anyone for disclosure of the taped conversations, will be dealt with in detail in the final Inquiry Report, it should be said that there is no evidence whatsoever that any officials in the Attorney General's Ministry acted with anything other than the public interest and the integrity of the administration of justice in mind.

4. The administration of justice in British Columbia

Throughout the public hearings, witnesses and interested parties repeatedly expressed the highest regard for Mr. Hughes

and his senior Ministry officials. Although there is disagreement between the police community and the Attorney General's Ministry as to which of them should have the final decision-making power regarding prosecutions, all those who are familiar with the criminal justice system in British Columbia have great confidence in it and respect the impartial way in which it is administered. The evidence in this case can give the public confidence in those who administer our justice system, and this conclusion needs to be communicated to the public at the earliest date.

The rule of law in a democracy requires the public's ongoing consent and confidence in order to survive. Any widespread unease with the essential fairness of our justice system can cripple it. Perception becomes reality when suspicion of injustice is allowed to fester. The system must be capable of quickly and convincingly resolving any such doubts.

This is why the Reid prosecution case is so important. It is not enough to know now that the system worked fairly. The adversarial nature of our political system and its apparent proximity to the administration of justice will inevitably raise questions of potential interference in criminal investigations involving political figures. The public inquiry process is not an efficient solution to the individual cases which will arise. The system itself must be capable of

demonstrating its integrity on an ongoing basis. The task of the final Inquiry Report is to address the systemic vulnerability which has been exposed by this case.

Respectfully Submitted:

Stephen Owen

Stephen Owen,
Commissioner